

# ACT No. 191

Regular Session, 2004

SENATE BILL NO. 768

BY SENATOR HOLLIS AND REPRESENTATIVE JOHNS

## AN ACT

To amend and reenact R.S. 6:965(C)(3) and (4) and 966 and to enact R.S. 6:965(C)(5) and (D) and 966.1, relative to additional default remedies; to provide for definitions; to provide for procedures for taking possession of collateral upon default; to provide for repossession agent licenses; to provide for a notice of repossession; to provide for contents; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:965(C)(3) and (4) and 966 are hereby amended and reenacted and R.S. 6:965(C)(5) and (D) and 966.1 are hereby enacted to read as follows:

### §965. Scope and definitions

\* \* \*

C. As used in this Chapter, the following terms shall have the following meanings:

\* \* \*

(3) "Default" means ~~failure to pay a minimum~~ **nonpayment** of two consecutive payments on the date due ~~pursuant to the terms of the note, contract, or other obligation secured by the chattel mortgage or security agreement.~~ **In the event that payments are required to be made more frequently than on a monthly basis, "default" shall mean nonpayment for a period of sixty days.**

(4) "Secured party" shall have the meaning set forth in R.S. 10:9-102(a)(72)

1 and shall also mean a lessor of a motor vehicle as defined in R.S. 9:3306(17).

2 R.S. 6:965(C)(5) is all new law.

3 (5) "Breach of peace" shall include, but not be limited to the following:

4 (a) Unauthorized entry by a reposessor into a closed dwelling, whether  
5 locked or unlocked.

6 (b) Oral protest by a debtor to the reposessor against repossession prior to  
7 the reposessor seizing control of the collateral shall constitute a breach of the peace  
8 by the reposessor.

9 R.S. 6:965(D) is all new law.

10 D. Beginning on or after January 1, 2005, the secured party seeking to utilize  
11 the remedies provided herein shall include the following in its security agreement:

12 "Louisiana law permits repossession of motor vehicles without judicial  
13 process."

14 §966. Procedure

15 A.(1) The procedures set forth in this Chapter may be used to ~~effect the~~  
16 ~~seizure and disposition~~ obtain possession and dispose of collateral following default  
17 by a debtor without previous citation and judgment, ~~upon notice to the debtor,~~ to  
18 enforce a security interest evidenced by a security agreement ~~importing a confession~~  
19 ~~of judgment~~ or a lease.

20 (2) Prior to the use of the procedures set forth in this Chapter, a secured  
21 party shall send notice to all debtors in writing at the last known address of the  
22 debtors, of the right of the secured party to take possession of the collateral  
23 without further notice upon default as defined in R.S. 6:965(C)(3). Such notice  
24 shall include the debtor's name, last known address, and description of the  
25 collateral and the following in at least 12-point type:

26 "Louisiana law permits repossession of motor vehicles upon default  
27 without further notice or judicial process."

28 (3) After obtaining possession of the collateral, the secured party may  
29 dispose of it in any manner permitted by Chapter 9 of the Louisiana

1        Commercial Law, R.S. 10:9-101, et seq. or by resort to available judicial  
2        procedures, and may cause the collateral to be retitled. Unless the secured party  
3        causes the collateral to be sold at judicial sale under ordinary or executory  
4        process, all receipts from the secured party's disposition of the collateral shall  
5        be applied as set forth in R.S. 10:9-601, and the secured party shall be obligated  
6        to account to the debtor for any surplus.

7                B. ~~A proceeding pursuant to this Chapter may be brought either in the parish~~  
8        ~~where the collateral is located, or as provided in the applicable provisions of Code~~  
9        ~~of Civil Procedure Art. 42: Unless otherwise agreed, a secured party has, on~~  
10        ~~default, the right to take possession of the collateral. In taking possession, a~~  
11        ~~secured party may proceed without judicial process if this can be done without~~  
12        ~~a breach of the peace or may proceed by other remedies available by law.~~

13                C. ~~Upon default the secured party shall have the right to obtain possession~~  
14        ~~and dispose of the collateral in accordance with the provisions of Chapter 9 of the~~  
15        ~~Louisiana Commercial Laws, R.S. 10:9-101 et seq., and to cause titled collateral to~~  
16        ~~be retitled. For purposes of this Chapter, the creditor shall send a notice to the debtor~~  
17        ~~at his last known address by registered mail or certified mail, return receipt requested:~~

18                (1) ~~Demanding payment of all delinquent amounts together with finance~~  
19        ~~charges, fees, and such other charges as provided for in the secured indebtedness on~~  
20        ~~or before a date not less than ten business days after such notice is sent:~~

21                (2) ~~Notifying the debtor that unless such payment is received the collateral~~  
22        ~~may be seized for sale, as provided in this Chapter:~~

23                D. ~~If the debtor fails to pay the secured indebtedness within the time set forth~~  
24        ~~in the notice, the secured party may cause the debtor to be served with a petition to~~  
25        ~~obtain possession and dispose of the collateral pursuant to Subsection C hereof to be~~  
26        ~~adjudicated through a summary proceeding by a court of competent jurisdiction:~~

27                E. ~~The secured party shall submit to the court the following proof:~~

28                (1) ~~An affidavit by the secured party or his agent setting forth the following:~~

29                (a) ~~The factual grounds on which the debtor's default is based:~~

1                   ~~(b) The amount secured by the chattel mortgage or security agreement,~~  
2                   ~~including any advances by the secured party.~~

3                   ~~(2) The note, contract, or other obligation secured by the security interest, as~~  
4                   ~~an exhibit to the affidavit.~~

5                   ~~(3) The security agreement encumbering the collateral, as an exhibit to the~~  
6                   ~~affidavit.~~

7                   ~~(4) A certificate indicating the date on which notice of default was sent to the~~  
8                   ~~debtor, the type of service of the rule made on the defendant, and the date of such~~  
9                   ~~service.~~

10                  ~~(5) An original and not less than one copy of the proposed order.~~

11                  ~~(6) Any written response by the debtor.~~

12                  ~~F. Upon presentation of the affidavit and exhibits, the secured party shall be~~  
13                  ~~entitled to obtain possession and dispose of the collateral, and the court shall~~  
14                  ~~immediately issue an order recognizing the right of the secured party to obtain~~  
15                  ~~possession, notifying the debtor of his right to collect or obtain his personal effects~~  
16                  ~~from the seizing creditor pursuant to Subsection L of this Section, and commanding~~  
17                  ~~the sheriff to seize the collateral and deliver the collateral to the secured party or his~~  
18                  ~~designee, as delineated herein for the following fees:~~

19                   ~~(1) \$400.00 if seized within ten days of receipt of the order.~~

20                   ~~(2) \$300.00 if seized within fifteen days of receipt of the order.~~

21                   ~~(3) \$200.00 if seized within twenty days of receipt of the order.~~

22                   ~~(4) \$100.00 if seized over twenty days after receipt of the order.~~

23                  ~~G. The minute clerk shall make an entry showing the dates of receipt of~~  
24                  ~~proof, review of the record, and issuance of the order. A certified copy of the signed~~  
25                  ~~order shall be sent to the debtor and secured party by the clerk of court.~~

26                  ~~H: C.~~ The provisions of this Section may be utilized only by the following:

27                   ~~(1) Financial institutions licensed by the commissioner of financial~~  
28                   ~~institutions pursuant to this Title, or licensed and regulated chartered under the laws~~  
29                   ~~of the state of Louisiana, another state, or the United States.~~

1                   (2) Persons licensed or regulated as lenders by the commissioner of financial  
2 institutions pursuant to the Louisiana Consumer Credit Law, R.S. 9:3510 et seq.

3                   (3) Persons licensed or regulated as lenders by the Louisiana Motor Vehicle  
4 Commission pursuant to the Louisiana Motor Vehicle Sales Finance Act, R.S.  
5 6:969.1 et seq.

6                   ~~±~~ **D.(1)(a) Any individual who physically obtains possession of the**  
7 **collateral pursuant to this Chapter shall obtain a repossession agent license**  
8 **from the office of financial institutions.**

9                   **(b) On or before January 1, 2005, the commissioner of financial**  
10 **institutions shall issue licenses to repossession agents who are members of the**  
11 **following organizations: National Finance Adjusters, Inc., Allied Finance**  
12 **Adjusters Conference, Inc., Time Adjusters Conference, Inc., or the American**  
13 **Recovery Association, Inc., or a Louisiana association of duly licensed**  
14 **repossession agents recognized as a viable association by the commissioner of**  
15 **financial institutions, and who meet any additional qualifications for licensure**  
16 **established by the commissioner of financial institutions pursuant to rules and**  
17 **regulations adopted in accordance with the Administrative Procedure Act.**

18                   **(2)** In the event a tow truck, as defined in R.S. 32:1713(5), is required to be  
19 used in the repossession, the provisions of Chapter 16 of Title 32 of the Louisiana  
20 Revised Statutes of 1950 pertaining to said tow truck shall apply. The tow truck  
21 owner or operator, as defined in R.S. 32:1713(6), shall possess a common carrier  
22 certificate issued by the Louisiana Public Service Commission pursuant to R.S.  
23 45:164. ~~In addition, the seizing creditor shall be responsible for all personal effects~~  
24 ~~located inside the seized collateral for the seventy-two-hour period immediately~~  
25 ~~following the seizure of said collateral.~~

26                   ~~±~~ **E.** The secured party shall have and retain all of the possessory and  
27 enforcement rights provided under Chapter 9 of the Louisiana Commercial Laws,  
28 R.S. 10:9-101 et seq., ~~but shall have no~~ **including the** right to recover a deficiency  
29 or any other costs associated with the seizure proceeding provided for in this Chapter.

1           ~~K. If for any reason proceedings begun under this Chapter are abandoned,~~  
2           ~~postponed, enjoined, or otherwise not fully completed through the issuance of an~~  
3           ~~order in favor of the secured party as provided in this Chapter, the secured party shall~~  
4           ~~have the right to proceed under any and all other means provided by law, including~~  
5           ~~ordinary or executory process with the right to pursue a deficiency.~~

6           ~~L. F.~~ If the debtor has personal property of his own or of another inside the  
7           seized **repossessed** collateral, the owner of the personal property shall have ~~seventy-~~  
8           ~~two hours~~ **ten days** in which to contact the ~~seizing~~ **repossessing** creditor and demand  
9           the return of his property. **The secured party shall immediately return the**  
10          **personal effects upon request of the debtor. At the end of thirty days following**  
11          **the repossession of the collateral, the personal effects located inside of the**  
12          **repossessed collateral shall be deemed abandoned and the secured party shall**  
13          **no longer be responsible for such personal effects.**

14          ~~M. The clerk shall collect only those costs and fees due to the sheriff and the~~  
15          ~~clerk's office for proceedings brought pursuant to this Chapter. Any additional fees~~  
16          ~~or costs imposed by law shall not be collected by the clerk.~~

17          ~~N. Repealed by Acts 2001, No. 943, §2.~~

18          §966.1. Notice of repossession; contents; fees

19          **R.S. 6:966.1 is all new law.**

20          A. If the secured party proceeds with repossession without judicial process,  
21          the secured party shall file with the recorder of mortgages in the parish where said  
22          collateral is located a "Notice of Repossession" within three days of taking  
23          possession of said collateral. The "Notice of Repossession" shall contain the debtor's  
24          name, last known address, date of birth, and a description of the collateral  
25          repossessed. The clerk of court shall transmit the "Notice of Repossession" to the  
26          appropriate law enforcement officer of the parish where the collateral is located. For  
27          purposes of this Section, the jurisdiction concerning the appropriate law enforcement  
28          officer shall be determined by the secured party according to the debtor's last known  
29          address.

1           Section 2. This Act shall become effective on January 1, 2005; if vetoed by the  
2           governor and subsequently approved by the legislature, this Act shall become effective on  
3           January 1, 2005, or on the day following such approval by the legislature, whichever is later.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_